

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

GREAT NORTHERN INSURANCE CO.  
As subrogee of Juan A. Rodriguez Vila and  
Iwalani Rodriguez

CIVIL NO. 11-1303 (DRD)

Plaintiff

Vs.

EL LEGADO PROPERTY MANAGEMENT  
COMPANY, INC.; EL LEGADO DE CHI CHI  
RODRIGUEZ GOLF RESORT, INC.;  
EL LEGADO DE CHI CHI RODRIGUEZ  
GOLF RESORT, (SC) SE; EL LEGADO  
HOMEOWNER'S ASSOCIATION, INC, and  
EL LEGADO CONDOMINIUM, REGIME I

Re: NEGLIGENCE, BREACH OF  
CONTRACT, & BREACH  
OF WARRANTY

Codefendants

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**MOTION TO SET ASIDE INITIAL SCHEDULING CONFERENCE  
AND REQUEST FOR ORDER GRANTING REAL LEGACY'S  
MOTION TO DISMISS AS UNOPPOSED**

TO THE HONORABLE COURT:

COMES NOW REAL LEGACY ASSURANCE COMPANY, INC, through the undersigned counsel and without submitting to this Honorable Court's jurisdiction, respectfully sets forth and prays:

1. This Honorable Court reset the Initial Scheduling Conference in the instant case for 4/23/2012. (See Docket No. 64).
2. The Home Owners Association filed an unopposed motion requesting order to be excused from the ISC, for meritorious reasons, which calls for the setting aside of the ISC. This Honorable Court just granted the aforementioned motion at Docket No. 67.

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3. On the other side, Plaintiff amended the complaint on 1/19/2012 to name Real Legacy Assurance Company, Inc. as defendant. (See Docket No. 42). Nevertheless, Real Legacy has not been served with process in the instant case.

4. Real Legacy exposed in its motion in compliance with order at docket 34, that it has appeared before this Honorable Court without submitting to its jurisdiction. And it stated that “Real Legacy has neither been served with process in any way”. (See Docket No. 36, at page 3, paragraph 7).

5. This Honorable Court agreed with Real Legacy, as to the fact that there has not been any service with process upon it:

“ORDER noting [36](#) Motion In Compliance. As Real Legacy has not been properly served, the Court hereby sets aside its Order of January 11, 2012 34 and relieves Real Legacy of the obligation to answer or otherwise plea. IT IS SO ORDERED. Signed by Judge Daniel R. Dominguez on 1/18/2012. (JD) (Entered: 01/18/2012) (See Docket No. 38). (Emphasis added).

6. This Honorable Court relieved Real Legacy from answering the complaint in the instant case.

7. **Since 1/31/2012** Real Legacy filed a motion to dismiss for lack of coverage in the case at bar, without submitting to this Honorable Court’s jurisdiction. (Docket No. 49).

8. Plaintiff filed a motion for relief under Rule 56(D), **but has not properly opposed Real Legacy’s motion to dismiss**. (See Docket No. 54).

9. Real Legacy filed a Response In Opposition To Plaintiff’s Motion For Relief Under Rule 56 (D), which will most probably be granted by this Honorable Court. Real Legacy exposed the following:

“Plaintiff makes reference all through-out the First Amended Complaint as to the alleged fact that Real Legacy provided **liability insurance**

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coverage to the El Legado Golf Resort and/or constantly refers to **Real Legacy and its insureds, within the liability context of Real Legacy's insurance policy.** (See Docket No. 42, page 4 paragraph 17; page 5 paragraph 21; page 6 paragraph 32; page 8 paragraphs 33, 34, 36, 37; page 9 paragraphs 38, 41, 42; page 10 paragraph 43).

Plaintiff is simply trying to make the certified true copy of Real Legacy insurance policy's genuineness appear as disputed, only to get this Honorable Court to convert Real Legacy's motion to dismiss into a motion for summary judgment. But in accordance with *Valle-Colón*, **being Real Legacy's insurance policy coverage sufficiently referred to in the First Amended Complaint's allegations**, this Honorable Court **should not convert Real Legacy's motion to dismiss to a motion for summary judgment.**

Real Legacy has afforded plaintiff enough certified information, from which the lack of coverage becomes obvious. Plaintiff just wants to prolong the instant case, requesting this Honorable Court additional unnecessary discovery.

Plaintiff filed the instant case since 3/30/2011, a year ago, but still has not complied with serving Real Legacy with process. As a matter of fact, plaintiff tried to get this Honorable Court to enter default judgment upon certain named defendants, thinking obviously to eventually present Real Legacy the judgment and have it against the wall. But Real Legacy is not a "defendant" in the instant case, but an "interested party". (See Docket). Real Legacy has filed several motions without submitting to this Honorable Court's jurisdiction, but has not been served with process at any time. This Honorable Court has recognized the fact that "Real Legacy has not been properly served". ( See Docket No. 38)".

(See Docket No. 61 at pages 7-8).

10. Real Legacy understands that it would be more pragmatic to set aside the ISC, until this Honorable Court resolves the motion to dismiss, which will most probably be granted by this Honorable Court. None of the named defendants in the case at bar are insured names covered by the policy issued by Real Legacy. The residences or villas where the robbery took place are not insured locations under Real Legacy's policy. The policy issued by Real Legacy is addressed to cover only the operations of the Golf Driving Range, Golf Club, Restaurant and

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Golf Store. None of the allegations contained in the amended complaint are covered by the policy.

11. Should this Honorable Court grant Real Legacy's motion to dismiss, this Honorable Court would have saved time and effort, since an ISC, neither discovery would be necessary.

WHEREFORE, it is respectfully requested from this Honorable Court to set aside the Initial Scheduling Conference set for 4/23/2012 (Docket No. 64), until Real Legacy's motion to dismiss is finally resolved; in the alternative, grant Real Legacy's the motion to dismiss as **unopposed** by plaintiff.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 20<sup>th</sup> day of April, 2012.

*S/ Ernesto R. Irizarry*

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date a true and exact copy of the foregoing has been filed electronically with the Clerk of the Court via CM/ECF system which will send

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notification of such filing via e-mail to all the attorneys of record.

*S/ Ernesto R. Irizarry*  
**ERNESTO R. IRIZARRY**